

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JIMMIE CALLUM, JR.,)	
)	
Plaintiff,)	Case No. 4:14-cv-03481-BHH
)	
v.)	
)	
)	
SOUTH CAROLINA CVS)	
PHARMACY, LLC, et. al.,)	
)	
Defendants.)	
_____)	

MOTION FOR SPOILATION SANCTIONS AGAINST THE DEFENDANTS

The Plaintiff asks the Court for spoliation sanctions against the Defendants for the Defendants failure to preserve electronic evidence. The Plaintiff, through counsel, made the Defendants aware of their duty to preserve such evidence, and the Defendants have failed to produce this evidence. This leads the Plaintiff to believe that this evidence has been lost, misplaced or destroyed by the Defendant, and on that basis, the Defendants Should be sanctioned for their action(s)/inaction.

1. The Verified Amended Complaint was filed with the U.S District Court – Florence Division on September 15, 2014. (Complaint – September 15, 2014).
2. A Notice Letter to preserve all Electronically Stored Information (ESI) was sent to the Defendants by Plaintiff’s Counsel on September 15, 2014. (Exhibit 1).

3. The Notice Letter specifically stated the types of ESI that was to be preserved by the Defendants, to include, audio and video evidence. (Exhibit 1, Pg. 2).
4. The Notice Letter specifically stated that all ESI with a last modified date of August 27, 2013, was to be preserved. (Exhibit 1, Pg. 2).
5. Plaintiff was informed by Defendant that ESI is only kept for one year, making preservation of ESI prior to the letter date impossible.
6. The Notice Letter specifically stated the Plaintiff take immediate action to preserve such ESI. (Exhibit 1, Pg. 2).
7. The Notice Letter specifically stated that the Defendants were to suspend routine destruction and guard against deletion, whether intentional or accidental. (Exhibit 1, Pg. 3).
8. The Notice Letter specifically stated that this duty to preserve ESI extended to the agents, attorneys and third parties that may hold or care for such ESI for the Defendants. (Exhibit 1, Pg. 7).
9. The Notice Letter requested a notice of compliance from the Defendants by September 29, 2014. (Exhibit 1, Pg. 8).
10. The Defendant did not submit their Initial Disclosures under Fed. R. Civ. P. 26(a)(1) until November 16, 2015. (Exhibit 2).
11. The Plaintiff sought through discovery “all documents, data compilations, and tangible things.” (Defendants’ Initial Rule 26(a)(1) Disclosures, Pg. 5).
12. This discovery request included in-store audio and video surveillance recordings.
13. As of September 19, 2016, these recordings have not been turned over to the Plaintiff.

14. The Plaintiff has a reasonable belief based on the passage of over two (2) years, and the Defendants' failure to produce this ESI, that it has been destroyed or lost.
15. The Defendant has a reasonable belief that the Defendants either allowed or caused to be allowed the destruction of ESI sought by the Plaintiff through discovery.
16. The defendant turned over thousands of pages of personal files, and manuals but little to no email traffic or audio and video evidence from the CVS stores cited in the Complaint.
17. To date, the Defendants have only turned over 33 intra-departmental emails, constituting most of their ESI production.
18. Based on this reasonable belief and the Defendants' actions during discovery, the Plaintiff asks the Court for spoliation sanctions against the Defendants for failing to preserve this evidence.

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.04

In accordance with Local Rule 7.04, this motion sets forth a full explanation of the reasons supporting the motion and a separate supporting memorandum of law would serve no useful purpose.

Respectfully submitted this 20th day of September, 2016

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